

DEPARTMENT OF HOME AFFAIRS

NO. 3312

18 April 2023

PUBLICATION OF THE ONE STOP BORDER POST BILL, 2022

The Department of Home Affairs (the "DHA") invites public comments on the draft One Stop Border Post Bill, 2022.

Written submissions should reach the DHA on or before **30 June 2023**. Submissions should be addressed to the Chief Director: Legal Services and may be forwarded to the DHA in any of the following manners:

- (a) delivered by hand to the Department of Home Affairs, 230 Johannes Ramokhoase Street, Hallmark Building (c/o old Proes and Andries Street), Pretoria, 0001, for attention of Adv Moses Malakate (Tel.: (012) 406 4273) or Ms Sipiwe Sambo (Tel.: (012) 406 4272);
- (b) mailed to the DHA at Private Bag X114, Pretoria, 0001;
- (c) faxed to 0865 144 267; or
- (d) e-mailed to Moses.Malakate@dha.gov.za and Sipiwe.Sambo@dha.gov.za

Any enquiries should be directed to Adv Moses Malakate at 076 481 4716 or Ms Sipiwe Sambo at (012) 406 4272.



DR P.A. MOTSOLEDI, MP
MINISTER OF HOME AFFAIRS

DATE: 13/4/2023

REPUBLIC OF SOUTH AFRICA

ONE STOP BORDER POST BILL

*(As introduced in the National Assembly (proposed section 75); explanatory
summary of Bill published in Government Gazette No. of) (The English text
is the official text of the Bill)*

(MINISTER OF HOME AFFAIRS)

[B—2022]

ACT

To provide for the establishment of one stop border posts through international agreements; to provide for the establishment of common control zones in the territory of an adjoining state through international agreements; to provide that international agreements provide for on one stop border processing arrangements; authorise the application of the laws of the Republic and the adjoining state in the one stop border post; and to provide for matters connected therewith.

BE IT THEREFORE ENACTED by the Parliament of the Republic of South Africa, as follows: —

ARRANGEMENT OF SECTIONS

1. Definitions
2. Application of Act
3. Establishment of control zones and one stop border posts
4. Application of border law enforcement
5. Application of criminal laws
6. Free transfer of money or goods within control zones
7. Obligation to remit
8. Regulations
9. Short title and commencement

Definitions

1. In this Act, unless the context shows that another meaning is intended—

“**adjoining state**” means a neighbouring state, including the agency of the state, with whom an agreement has been entered into;

“**agreement**” means an international agreement referred to under section 3(1) of this Act and concluded in terms of section 231 of the Constitution;

“**border law enforcement**” means the execution and enforcement of border law enforcement legislation relevant to facilitating and managing the legitimate movement of persons and goods within the border law enforcement area and ports of entry;

“**border law enforcement legislation**” means all relevant legislation dealing with border management including border law enforcement;

“**common control zone**” means the geographical area or zone where the domestic laws of either adjoining state that is applicable to clearance formalities for goods, people and means of transport exiting one country and entering another are conducted and wherein officials of such adjoining states are entitled to apply their respective domestic laws;

“**Constitution**” means the Constitution of the Republic of South Africa, 1996;

“**exclusive zone**” an area in the common control zone dedicated for the exclusive use of one of the parties;

“**Minister**” means the Minister of Home Affairs;

“**official**” means an authorised person responsible for exercising border controls on behalf of a party, and includes a police officer;

“**one-stop border post**” means a port of entry established as a one stop border post in terms of section 3(1)(a) of this Act;

“**party**” means a party to an agreement, and “**parties**” has the corresponding meaning;

“**port of entry**” means a port of entry designated by the Minister in terms of section 9A of the Immigration Act, 2002 (Act No. 13 of 2002), and includes any port, point or place of entry or exit approved by the Minister in terms of section 30 of the Border Management Authority Act;

“**Republic**” means the Republic of South Africa;

“**regulation**” means any regulation made under this Act; and

“**this Act**” includes the regulations.

Application of Act

2. This Act applies outside the territory of the Republic in accordance with any binding international agreement entered into between the Republic and an adjoining state in terms of section 231 of the Constitution.

Establishment of one stop border post and common control zone

3. (1) Subject to section 231 of the Constitution, the Minister may conclude an agreement with an adjoining state to—

- (a) establish a one-stop border post that will be jointly managed by the Republic and the adjoining state, at any port of entry within a control zone in the territory of the adjoining state or the Republic; or
- (b) establish a common control zone in the territory of the adjoining state; and
- (c) permit officials to exercise—
 - (i) border law enforcement at the border post referred to in paragraph (b); and
 - (ii) any power of arrest, search, seizure or detention of person or thing, in accordance with the laws of the Republic and the adjoining state within the common control zone.

(2) The Minister must, by notice in the *Gazette*, list a port of entry as a one stop border post after its establishment as a one stop border post as contemplated under section (1)(a) of this Act.

Application of border law enforcement

4. (1) The agreement contemplated under section 3(1) must provide that the laws relating to border law enforcement of—

- (a) the adjoining state apply in the common control zone established in the territory of the Republic and must be enforced by the officials of the adjoining state in the same way as they are enforced in the territory of the adjoining state; and
- (b) the Republic apply in the common control zone established in the territory of the adjoining state and must be enforced by the officials of the Republic in the same way as they are enforced within the Republic.

(2) Any contravention of the laws relating to border law enforcement of the adjoining state within the common control zone in the territory of the Republic is subject to the

laws of the adjoining state as if the contravention occurred in the territory of the adjoining state.

(3) Any contravention of the laws relating to border law enforcement of the Republic within the common control zone in the territory of the adjoining state is subject to the laws of the Republic as if the contravention occurred in the territory of the Republic.

(4) An official enforcing border law enforcement and procedures in a common control zone must do so in accordance with the border law enforcement laws of the state that he or she works for.

Application of criminal laws

5. (1) Subject to subsection (5) and any Article to the contrary provided for in an agreement contemplated under section 3, where an act or omission that constitutes a criminal offence in an adjoining state is committed in the common control zone in the territory of the adjoining state—

(a) the offender concerned is subject to the jurisdiction of the courts of the adjoining state; and

(b) the offence is decided in terms of the criminal law of the adjoining state.

(2) Where an act or omission that constitutes a criminal offence in the Republic is committed in the common control zone in the territory of the Republic—

(a) the offender concerned is subject to the jurisdiction of the courts of the Republic; and

(b) the offence is decided in terms of the criminal law of the Republic.

(3) Where an act or omission that constitutes a criminal offence in the Republic is committed in the exclusive zone of the Republic in the territory of the adjoining state—

(a) the offender concerned is subject to the jurisdiction of the courts of the Republic; and

(b) the offence is decided in terms of the criminal law of the Republic.

(4) Where an act or omission that constitutes a criminal offence in the adjoining state is committed in the exclusive zone of the adjoining state in the territory of the Republic—

(a) the offender concerned is subject to the jurisdiction of the courts of the adjoining state; and

(b) the offence is decided in terms of the criminal law of the adjoining state.

(5) Despite subsection (1), where an act or omission referred to in subsection (1) is also an offence in the Republic and is committed—

- (a) in the common control zone in the territory of the Republic; and
- (b) by a person who is not a citizen of the adjoining state, and the laws of the adjoining state apply to the extent that a finding of guilty of that act or omission may lead to the offender being imposed a death penalty—
 - (i) the offender concerned is subject to the jurisdiction of the courts of the Republic; and
 - (ii) the offence is decided in terms of the criminal law of the Republic.

Free transfer of money or goods within common control zone

6. Subject to the agreement envisaged under section 3, the goods or money moved by any official, for official use, from the territory of the Republic or the territory of an adjoining state to the territory of the Republic or adjoining state as the case may be, through the common control zone, are not subject to the import or export and entry or exit laws of the Republic or the adjoining state.

Obligation to re-admit

7. (1) Where—

- (a) the state of entry, either the Republic or the adjoining state, declines to admit any person, vehicle, animal, merchandise or other goods; or
- (b) a person decides not—
 - (i) to enter through a designated port of entry of the Republic or the adjoining state; or
 - (ii) to send or take back any vehicle, animal, merchandise or other goods under his or her control to the state of exit, the authorities of the state of exit must accept the person back into such state and any vehicle, animal, merchandise or other goods under that person's control.

(2) Despite subsection (1), the competent authorities of the state of exit, when receiving the person referred to under that subsection, may take any measures in accordance—

- (a) with its domestic laws; and
- (b) in a manner that does not impose obligations on the state of entry.

Regulations

8. The Minister may make regulations not inconsistent with this Act and which he or she considers necessary or expedient to give effect to the objects of this Act.

Short title and commencement

9. This Act is called the One-Stop Border Post Act, 2022 and comes into operation on a date fixed by the President by proclamation in the *Gazette*.